UNITED NATIONS **A S**

General Assembly
Security Council

Distr.
GENERAL

A/52/891
S/1998/376
6 May 1998

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Fifty-second session
Agenda item 135
REPORT OF THE INTERNATIONAL TRIBUNAL FOR THE PROSECUTION OF PERSONS RESPONSIBLE FOR SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW COMMITTED IN THE TERRITORY OF THE FORMER YUGOSLAVIA SINCE 1991

SECURITY COUNCIL
Fifty-third year

Identical letters dated 5 May 1998 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council

I am attaching, for your consideration and that of the members of the Security Council and the General Assembly, a letter dated 16 April 1998 from the President of the International Tribunal for the Former Yugoslavia. In her letter, President McDonald raises the problem faced by the Tribunal as a result of the recent dramatic increase in the number of persons accused of crimes under the Statute of the Tribunal who are in custody in the Tribunal's Detention Unit at The Hague. It is recalled that a similar request for the establishment of a third Trial Chamber for the International Criminal Tribunal for Rwanda was submitted for the consideration of the Assembly and the Council on 15 October 1997 (A/52/504-S/1997/812) and that a resolution to that effect was adopted by the Council on 30 April 1998 (resolution 1165 (1998)).

President McDonald notes that, with the current capacity of the two Trial Chambers, and with the possibility that further indicted persons might be transferred to the custody of the Tribunal or that several cases might be severed, the Tribunal might require considerable time to complete all the trials. This would run counter to the duty of the Tribunal to provide accused persons with both a fair and expeditious trial, in the interest of the mandate of the Tribunal for the maintenance of international peace and security in the former Yugoslavia. President McDonald further notes that a number of Member States have offered to help by financing the building of two additional courtrooms. With the establishment of a third Trial Chamber, therefore, all three courtrooms will be fully utilized.

In order to address the foregoing requirements, President McDonald requests that a third Trial Chamber of the Tribunal, staffed by three additional judges, be established, and that a fourth judge be added, to be assigned as needed to either a Trial Chamber or to the Appeals Chamber. She underlines the urgency of this request, especially since a period of time would be required before a third Trial Chamber is fully functional.

As requested by members of the Security Council after her address on 12 February 1998, President McDonald attaches to her letter a more detailed report as well as an estimate of annual costs to the Tribunal of an additional Trial Chamber and full utilization of the third courtroom. The Registry of the Tribunal has estimated such annual costs as amounting to $14,150,000. The Secretary-General notes that this unofficial estimate must be reviewed by the Controller and detailed estimates will be made available to the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee.

The establishment of a third Trial Chamber and the election of four additional judges would require the amendment by the Security Council of Articles 11, 12 and 13 of the Statute of the Tribunal. Following such amendment, the General Assembly would be requested to approve the related increase in the budget of the Tribunal. Finally, the Security Council and the General Assembly would have to elect the four additional judges in accordance with the Statute of the Tribunal.

I would appreciate it if you would bring the present letter and its attachments to the attention of members of the Security Council and the General Assembly for their approval of the request for the establishment of an additional Trial Chamber, and the election of four additional judges, for the Tribunal.

(Signed) Kofi A. ANNAN

ANNEX

Letter dated 16 April 1998 from the President of the International Tribunal for the Former Yugoslavia addressed to the Secretary-General

I have the honour to refer to my address, on 12 February 1998, to the Security Council, expressing the need of the International Tribunal for the Former Yugoslavia for an additional Trial Chamber of three judges and a fourth judge to be assigned on an as-needed basis to either a Trial Chamber or the Appeals Chamber. While I was at Headquarters, I also spoke with you regarding this matter.

When I addressed the Security Council, a number of its members raised questions relating to the financial aspects of the International Tribunal's proposal for additional judges and requested further details on the impact an additional Trial Chamber would have on the budget of the Tribunal. I have the honour to submit to you that report, which addresses that issue (see appendix).

The report contains a detailed financial statement of the staffing requirements and costs for the Chambers, the Office of the Prosecutor and the Registry, which will be made available to the Advisory Committee on Administrative and Budgetary Questions and the Fifth Committee. The request for additional judges that the Security Council is called upon to consider, however, is based on the need to provide accused persons in custody with an expeditious trial and to utilize fully the court facilities that the Tribunal will shortly have in place.

The International Tribunal for the Former Yugoslavia at present has 25 accused persons in its Detention Unit. The Statute of the Tribunal guarantees the accused a fair and expeditious trial. Yet some have been in custody for long periods of time awaiting both the commencement and conclusion of their trials. Based on the number of persons now in custody, there are 12 trials that have to be conducted. Further, there are 47 persons who have been publicly indicted who are not in custody; if they were all transferred, the Tribunal would have a potential for at least 21 trials to be conducted. These numbers do not take into consideration the real possibility of severance based on motions for separate trials, which, of course, would greatly increase the numbers of trials required.

In order for the International Tribunal to carry out its mandate, a number of Member States have offered to help by financing the building of additional court facilities to carry out our trials. One courtroom will be ready for trial activity at the beginning of May 1998 and a second will be complete by late June 1998. Obviously, the three courtrooms will not be fully utilized if the Tribunal has only two Trial Chambers. The addition of one Trial Chamber would allow the Tribunal to conduct trials simultaneously. Without this addition, some accused who have recently been placed in custody may have to wait until the year 2000 for their cases to begin, and certainly for their cases to be concluded.

The Security Council established the International Tribunal to help bring about and maintain international peace and security in the former Yugoslavia. If the Tribunal is to discharge this mandate, as a judicial institution, it must demonstrate that it can and will provide accused persons with both a fair and expeditious trial. Additional judges are needed for this purpose.

The International Criminal Tribunal for Rwanda has also submitted a request for additional judges. You have referred this request to the Security Council for action (A/52/504-S/1997/812 of 21 October 1997). I am respectfully requesting that you officially refer the present letter and the proposal of the International Tribunal for the Former Yugoslavia to the Security Council in the same manner. In this regard I would note that I have also sent a copy of the report to the President of the Council.

There is an urgency to this request. Firstly, as I have indicated, the number of accused persons in custody has increased dramatically in the last few months. Secondly, there is a need to utilize fully the additional courtrooms made possible by donations from Member States. Thirdly, time is needed to carry out the necessary procedures for additional judges to be elected, should this request be favourably considered. Therefore, I would sincerely appreciate any assistance that you would provide to the International Tribunal in assuring that this request and report are considered by the Security Council in a timely manner.

(Signed) Gabrielle Kirk McDONALD
President

APPENDIX

Report by the International Tribunal for the Former Yugoslavia on the need for and additional Trial Chamber and the full utilization of its courtrooms

I. INTRODUCTION

1. The present report is submitted in support of the proposal by the International Tribunal for the Former Yugoslavia to establish an additional Trial Chamber, as outlined in President Gabrielle Kirk McDonald's presentation to the Security Council of 12 February 1998. As President McDonald indicated, the activities of the International Tribunal have increased dramatically in recent months.

2. Since October 1997, the number of accused persons in custody has increased almost threefold, up from 10 to 29.[a] In mid- to late 1997 a number of Member States recognized the need to provide additional assistance to the Tribunal as a result of the increasing number of accused persons being brought to The Hague. In order for the International Tribunal to carry out its mandate expeditiously, those Member States offered to help by financing the building of additional court facilities to carry out trials.[b] Initially, the Government of the United Kingdom of Great Britain and Northern Ireland provided funding for a second courtroom, and that facility will be ready for trial activity at the beginning of May 1998. Later in the year, the Governments of the Netherlands and the United States of America supplemented by a donation from Canada, offered assistance for a joint project to construct a third and expanded court facility, which would accommodate joint trials of up to six accused. That courtroom will be ready for trial activity in late June 1998.

3. The International Tribunal currently has 12 trials to be conducted by its two Trial Chambers.[c] Further, there are 47 additional public indictees who are not in custody. Should all those indictees be transferred to the Tribunal, there is a potential for 23 trials to be conducted. These numbers do not take

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[a] The Prosecutor withdrew indictments against three accused in December and in March 1998 an accused who is paralysed was provisionally released pending trial without objection by the Prosecution. One convicted person is awaiting transfer for incarceration. There are presently 25 accused persons in the Tribunal's Detention Unit.

[b] The Tribunal proposed the construction of a new court facility in its budget for 1998. The proposal was approved by the General Assembly but construction would not be completed before early 1999.

[c] One trial is presently being conducted by a Trial Chamber of three judges who were permitted by the Security Council in its resolution 1126 (1997) to remain until November 1998 to complete the trial. (Prosecutor v. Zejnil Delalić, Zdravko Mucić, also known as "Pavo", Hazim Delić and Esad Landžo, also known as "Zenga", Case No. IT-96-21-T, T.Ch.II.)

into consideration the real possibility of severance based on motions for separate trials, which, of course would greatly increase the number of proceedings required. Also, the total number of sealed indictments is known only to the Office of the Prosecutor.

4. The Statute of the International Tribunal for the Former Yugoslavia guarantees the accused a fair and expeditious trial. Yet some accused have been in custody for long periods of time awaiting the commencement of their trials - one accused was in custody for almost one year and three months before his trial was commenced. Others have been in custody for two years awaiting the completion of their trial. Because there has been only one courtroom to be shared by the Trial Chambers and the Appeals Chamber, the available time in the single courtroom has been allocated among the four pending trials as well as appeals proceedings. This situation has created severe scheduling problems.

5. The judges have approved amendments to the Rules of Procedure and Evidence to accelerate the trials. However, even with these expedited procedures, a third Trial Chamber is needed for the International Tribunal to best provide expeditious trials to the accused persons in custody and to those who undoubtedly will be transferred in the very near future.

6. The Security Council established the International Tribunal for the Former Yugoslavia to help bring about and maintain international peace and security in the former Yugoslavia. In less than four and a half years, the Tribunal has developed into a functioning international criminal judicial institution, the first of its kind. It has created an international code of criminal procedure and has established precedent interpreting international customary law proscribing serious violations of international humanitarian law. The International Tribunal, which owes its creation to the Security Council, now calls upon that body to enable it to discharge its mandate in accordance with standards of due process. It would be a travesty to see the extensive work put into building this institution stymied by an inadequately staffed Chambers, Office of the Prosecutor and Registry.

7. A number of members of the Security Council have raised questions relating to the financial aspects of the proposal and requested further details on the impact an additional Trial Chamber would have on the budget of the International Tribunal. The cost estimate below indicates that the additional Chamber itself will require an expenditure of less than $1.2 million per annum. The major portion of the increased financial requirements arises directly from the full utilization of the third courtroom and requirements for the Office of the Prosecutor and the Registry. The costs attendant to those increases amount to approximately $13 million per annum.

II. FINANCIAL IMPLICATIONS

8. The capacity of the International Tribunal to fulfil its mandate is being significantly enhanced by the addition of the two new courtrooms, but the Tribunal will need resources for additional staff and equipment to carry out the activity. The Tribunal's 1998 resource level was designed to accommodate two

Trial Chambers,[d] as well as investigative, prosecutorial and support costs at the level of two operational courtrooms and an average of 18 detainees.[e] The increase in the number of detainees and the availability of three court facilities will be addressed during the remainder of 1998 by short-term measures. For 1999, there will be a pressing need to utilize the third available court facility to provide expeditious trials for detainees who will have been held in remand for some time. A third Trial Chamber, consisting of three additional judges and a rotating judge, is required.

9. An analysis has been prepared of the direct costs for a third Trial Chamber, consisting of four judges, five Professional legal staff and two secretaries. This amounts to $1,153,400 for a full calendar year.

10. In addition, preparation for trials, support costs and operational requirements for the courtroom to be used by the new Chamber must be taken into consideration. Approximately 125 additional staff would be required for prosecution and registry tasks. This includes staff and expenses for the Prosecutor's Office to complete investigations and to prepare and carry out the prosecution of cases and Registry requirements for court management, translation and interpretation, supplies, witness and defence costs, furniture and equipment and administrative support personnel. The cost for these items is $12,996,600 for the full calendar year.

11. The addition of a third Trial Chamber and the related support would significantly speed up the completion of the Tribunal's mandate. A summary description of the costs involved and additional staff required is provided in the table below.

Estimated annual cost to the International Tribunal for the Former Yugoslavia of an additional Trial Chamber and full utilization of a third courtroom

(Thousands of United States dollars)

Type of expenditure	Total
Chambers	
Judges' salary and common staff costs	812.0
Salary costs, secretarial support	68.9
Salary costs, legal support	272.5
Total, Chambers	1 153.4

[d] A third Trial Chamber was retained temporarily to complete the Celebici trial, which had begun prior to the election and appointment of new judges in November 1997.

[e] The 1998 budget assumed 12 detainees from January to June, increasing to 24 detainees in the second half of the year.

Type of expenditure	Total
Office of the Prosecutor	
Personnel costs	3 253.8
Consultants and experts	80.1
Travel of personnel	351.3
Total, Office of the Prosecutor	3 685.2
Registry	
Registry costs	
Personnel costs	3 609.2
Interpretation and translation	1 262.2
Travel of personnel	60.0
Total, Registry	4 931.4
Court-related costs	
Witness costs	545.7
Defence counsel	2 400.0
Total, court-related costs	2 945.7
Administrative support costs	
Communications	226.9
Miscellaneous services	65.1
Supplies	282.2
Acquisition of equipment	860.1
Total, administrative support costs	1 434.3
Grand total	14 150.0